DRAFT RULE - Version 3

SECTION 1. 327 IAC 2-1.8 IS ADDED TO READ AS FOLLOWS:

RULE 1.8. WETLAND WATER QUALITY STANDARDS

327 IAC 2-1.8-1 Definitions

Authority:
Affected:

Sec. 1. The following definitions apply throughout this rule:

(1) "Acid bogs" have the following characteristics:

(A) Morphology: glacial moraine ice-block depressions or "kettles," rarely in unglaciated areas

(B) Hydrology: non-flowing or very slow flowing water, saturated, seasonal water level fluctuations

(C) Water chemistry: low pH (acidic)

(D) Nutrient availability: low

(E) Substrate: sphagnum peat or other low nutrient organic substrates, may rise or fall with seasonal water level fluctuations

(F) Indicator species: bog rosemary (*Andromeda glaucophylla*), dragon's mouth (*Arethusa bulbosa*), screwstem *(Bartonia virginica),* dwarf birch (*Betula pumila*), grass pink (*Calopogon tuberosus*), hair star sedge (*Carex atlantica capillacea*), gray bog sedge (*Carex canescens*), cordroot sedge (*Carex chordorrhiza*), two-seeded sedge (*Carex disperma*), large-fruited star sedge (*Carex echinata*), muck sedge (*Carex limosa*), running bog sedge (*Carex oligosperma*), few-flowered bog sedge (*Carex pauciflora*), three-seeded bog sedge (*Carex trisperma*), leatherleaf (*Chamaedaphne calyculata angustifolia*), moccasin flower (*Cypripedium acaule*), narrow-leaved sundew (*Drosera intermedia*), round-leaved sundew (*Drosera rotundifolia*), bog spike rush *(Eleocharis robbinsii),* slender cotton grass (*Eriophorum gracile*), dense cotton grass (*Eriophorum spissum*), rusty cotton grass (*Eriophorum virginicum*), yellow avens *(Geum aleppicum),* white fringed orchid (*Habenaria blephariglottis*), orange fringed orchid (*Habenaria ciliaris*), marsh St. John's wort (*Hypericum virginicum*), tamarack (*Larix laricina*), mountain holly (*Nemopanthus mucronata*), snake-mouth orchid (*Pogonia ophioglossoides*), poison sumac (*Rhus vernix*), white beak rush (*Rhynchospora alba*), silky willow (*Salix sericea*), pitcher plant (*Sarracenia purpurea*), arrow grass (*Scheuchzeria palustris americana*), Smith's tufted bulrush *(Scirpus smithii),* hardhack (*Spiraea tomentosa rosea*), bog bladderwort (*Utricularia geminiscapa*), highbush blueberry *(Vaccinium corymbosum),* large cranberry (*Vaccinium macrocarpon*), small cranberry (*Vaccinium oxycoccus*), smooth white violet (*Viola pallens*), or Virginia chain fern (*Woodwardia virginica*).

(2) "Acid seeps" have the following characteristics:

(A) Morphology: unglaciated hill region

(B) Hydrology: groundwater discharge, flowing at least part of the year

(C) Water chemistry: low pH (acidic)

(D) Nutrient availability: indistinct

(E) Substrate: thin layer of muck over a mineral substrate

(F) Indicator species: *Osmunda cinnamomea, Osmunda regalis, Carex bromoides, Carex lurida, Platanthera clavellata, Aronia melanocarpa, Ilex verticillata, Polygonum arifolium, Impatiens biflora, Dryopteris cristata,* or *Sphagnum spp.*

(3) "Bog" means a classification of wetlands that includes acid bogs and circumneutral bogs.

(4) "Circumneutral bogs" have the following characteristics:

(A) Morphology: glacial moraine ice-block depressions or "kettles," rarely in unglaciated areas

(B) Hydrology: groundwater inputs create a minerotrphic head of water. Non-flowing or very slow flowing water, saturated, seasonal water level fluctuations

(C) Water chemistry: circumneutral to slightly acidic (low pH). Deep rooted vegetation may be exposed to the alkaline or circumneutral minerotrophic groundwater while shallow roots inhabit more acidic layers of the peat substrate.

(D) Nutrient availability: low

(E) Substrate: sphagnum peat or other low nutrient organic substrates, may rise or fall with seasonal water level fluctuations

(F) Indicator species: green bog sedge *(Carex brunnescens),* bog panicled sedge *(Carex diandra),* narrow-leaved wooly sedge *(Carex lasiocarpa americana),* slender sedge *(Carex leptalea),* tamarack *(Larix laricina),* buckbean *(Menyanthes trifoliata minor),* Northern panic grass *(Panicum boreale),* marsh cinquefoil *(Potentilla palustris),* poison sumac *(Rhus vernix),* white beak rush *(Rhynchospora alba),* Northern gooseberry *(Ribes hirtellum),* bog willow *(Salix pedicellaris hypoglauca),* pitcher plant *(Sarracenia purpurea),* flat-leaved bladderwort *(Utricularia intermedia),* small bladderwort *(Utricularia minor),* or highbush blueberry *(Vaccinium corymbosum).*

(5) "Circumneutral seeps" have the following characteristics:

(A) Morphology: located on the lower slopes of hills

(B) Hydrology: cold groundwater dominant water source

(C) Water chemistry: alkaline (high pH) to circumneutral

(D) Nutrient availability: low nutrient availability, high mineral content

(E) Substrate: organic or mineral

(F) Indicator species: creeping bent grass *(Agrostis alba palustris),* mead's stiff sedge *(Carex meadii),* twig rush *(Cladium mariscoides),* tufted hair grass *(Deschampsia caespitosa),* short-headed rush (Juncus brachycephalus), yellow monkey flower *(Mimulus glabratus fremontii),* grass of Parnassus *(Parnassia glauca),* low calamint *(Satureja arkansana),* skunk cabbage *(Symplocarpus foetidus),* or slender bog arrow grass *(Triglochin palustris).*

(6) "Commissioner" means the commissioner of the department of environmental management.

~~(6)~~ (7) "Compensatory mitigation" means the replacement, enhancement, or restoration of wetlands and their associated uses in compensation for wetlands and their associated uses adversely impacted by a given permitted activity.

(8) "Control Document"means an NPDES permit, a § 401 water quality certification, a facility construction permit, an industrial pretreatment permit issued by the Indiana department of environmental management (IDEM), a record of decision issued pursuant to 42 U.S.C. 9601, a commissioner's order, an agreed order, or a consent decree.

(9) "Cypress swamps" have the following characteristics:

(A) Morphology: depressions and sloughs associated with the Wabash and Ohio

Rivers and their major tributaries.

(B) Hydrology: seasonally to permanently saturated or ponded.

(C) Water chemistry: indistinct

(D) Nutrient availability: indistinct

(E) Substrate: very poorly drained and aerated soils usually not peat

(F) Indicator species: white milkweed (*Asclepias perennis*), water hickory *(Carya aquatica),* water locust (*Gleditsia aquatica*), featherfoil (*Hottonia inflata*), climbing hempweed (*Mikania scandens*), swamp cottonwood *(Populus heterophylia),* swamp tupelo *(Nyssa aquatica),* American storax (*Styrax americana*), or bald cypress (*Taxodium distichum*).

(10) "Dune and swales" have the following characteristics:

(A) Morphology: sand dunes divided by low-lying areas referred to as swales. Found adjacent to or near Lake Michigan. Within the swale areas wet prairies, pannes, and coastal remnant communities may be found.

(B) Hydrology: groundwater driven

(C) Water chemistry: alkaline, carbonate rich

(D) Nutrient availability: indistinct

(E) Substrate: wet calcareous sand

(F) Indicator species: pale false foxglove *(Agalinis skinneriana),* sea rocket *(Cakile edentula),* golden sedge *(Carex aurea),* prairie gray sedge *(Carex conoidea),* early fen sedge *(Carex crawei),* large yellow sedge *(Carex flava),* false golden sedge *(Carex garberi),* green yellow sedge *(Carex viridula),* Indian paintbrush *(Castilleja coccinea),* dune thistle *(Cirsium pitcheri,* twig rush *(Cladium mariscoides),* small yellow lady's slipper *(Cypripedium calceolus parviflorum),* wrinkle-sheathed spike *(Eleocharis olivacea),* seaside spurge *(Euphorbia polygonifolia),* fringed gentian *(Gentiana crinita),* false heather *(Hudsonia tomentosa),* Kalm's St. John's wort *(Hypericum kalmianum),* beach pea *(Lathyrus japonicus glaber),* Northern panic grass *(Panicum boreale),* jack pine *(Pinus banksiana),* jointweed *(Polygonelia articulate),* rose gentian *(Sabatia angularis), dune willow (Salix syrticola),* tall nut rush *(Scleria trigiomerata),* sand club moss *(Selaginella rupestris),* dune goldenrod *(Solidago racemosa gillmanii),* common bog arrow grass *(Triglochin maritima),* horned bladderwort *(Utricularia cornuta),* humped bladderwort *(Utricularia gibba),* or hair bladderwort *(Utricularia subulata).*

(11) "Duration" (in regard to inundation/soil saturation) means the length of time during which water stands at or above the soil surface (inundation), or during which the soil is saturated. As used herein, duration refers to a period during the growing season.

(12) "Fens" have the following characteristics:

(A) Morphology: occurs where water travels through carbinate rich formations and discharges forming a wetland. Generally located near glacial formations such as kames, eskers, or moraines. But also may occur near river bluffs or dunes and in flats associated with the above formations.

(B) Hydrology: fed by mineotrophic groundwater. Non-flowing or very slowly flowing water which fluctuates seasonally.

(C) Water chemestry: alkaline, rich in carbonates (i.e. calcium carbonates or magnesium carbonates)

(D) Nutrient availability: high mineral content, low nutirient content.

(E) Substrate: marl, peat, or muck

(F) Indicator species: lake cress *(Armoracia aquatica),* rush aster *(Aster borealis),* lower water parsnip *(Berula erecta),* dwarf birch *(Betula pumila),* marsh bellflower *(Campanula uliginosa),* prairie star sedge *(Carex interior),* large yellow sedge *(Carex flava),* fen panicled sedge *(Carex prairea),* fen star sedge *(Carex sterilis),* Mead's stiff sedge *(Carex meadii),* swamp thistle *(Cirsium muticum),* twig rush *(Cladium mariscoides),* hemlock parsley *(Conioselinum chinense),* white lady's slipper *(Cypripedium candidum),* wicket spike rush *(Eleocharis rostellata),* narrow-leaved cotton grass *(Eriophorum angustifolium),* queen of the prairie *(Filipendula rubra),* black ash *(Fraxinus nigra),* rough bedstraw *(Galium asprellum),* small fringed gentian *(Gentiana procera),* northern bog orchid *(Habenaria hyperborea huronensis),* bog lobelia *(Lobelia kalmii),* narrow-leaved loosestrife *(Lysimachia quadriflora),* marsh wild timothy *(Muhlenbergia glomerata),* grass of parnassus *(Parnassia glauca),* fen betony *(Pedicularis lanceolata),* sweet william phlox *(Phlox maculata),* snake-mouth orchid *(Pogonia ophioglossoides),* shrubby cinquefoil *(Potentilla fruticosa),* alder buckthorn *(Rhamnus alnifolia),* lance-leaved buckthorn *(Rhamnus lanceolata),* white beak rush *(Rhynchospora alba),* hair beak rush *(Rhynchospora capillacea),* northern gooseberry *(Ribes hirtellum),* sage willow *(Salix candida),* low calamint *(Satureja arkansana),* swamp saxifrage *(Saxifraga pensylvanica),* low nut rush *(Scleria verticillata),* marsh club moss *(Selaginella apoda),* Ohio goldenrod *(Solidago ohioensis),* swamp goldenrod *(Solidago patula),* bog goldenrod *(Solidago uliginosa),* eastern white cedar *(Thuja occidentalis),* false asphodel *(Tofieldia glutinosa),* slender bog arrow grass *(Triglochin palustris),* rock elm *(Ulmus thomasii),* flat-leaved bladderwort *(Utricularia intermedia),* small bladderwort*(Utricularia minor),* common valerian *(Valeriana ciliata),* bog valerian *(Valeriana uliginosa),* or American brooklime*(Veronica americana).*

(13) "Flats (muck and sand)" have the following characteristics:

(A) Morphology: found at the margins of lakes or covering shallow basins

(B) Hydrology: water level of basin fluctuates during a season of from year to year in response to the amount of precipitation. Muck flats may float on the water surface but are usually inundated during high water periods and exposed periodically.

(C) Water chemistry: indistinct

(D) Nutrient availability: indistinct

(E) Substrate: sand, or peat

(F) Indicator species: beach three-awn grass *(Aristida tuberculosa),* stiff aster (*Aster ptarmicoides*), sea rocket *(Cakile edentula),* winged oval sedge *(Carex alata),* twig rush *(Cladium mariscoides),* black-fruited spike *(Eleocharis melanocarpa),* wrinkle-sheathed spike *(Eleocharis olivacea),* bog spike rush *(Eleocharis robbinsii),* pipewort *(Eriocaulon septangulare),* autumn sedge *(Fimbristylis autumnalis),* chestnut sedge *(Fimbristylis puberula),* umbrella sedge *(Fuirena pumila),* water pennywort *(Hydrocotyle umbellate),* brown-fruited rush *(Juncus pelocarpus),* round-headed rush *(Juncus scirpoides),* southern yellow flax *(Linum intercursum),* stiff yellow flax *(Linum striatum),* sessile water horehound *(Lycopus amplectens),* sand panic grass *(Panicum spretum),* warty panic grass *(Panicum verrucosum),* cross milkwort *(Polygala cruciata aquilonia),* Carey's heartsease *(Polygonum careyi),* long-beaked bald rush *(Psilocarya scirpoides),* meadow beauty *(Rhexia virginica),* grass beak rush *(Rhynchospora globularis*

recognita), horned beak rush *(Rhynchospora macrostachya),* Pursh's tufted bulrush *(Scirpus purshianus),* Smith's tufted bulrush *(Scirpus smithii),* netted nut rush *(Scleria reticularis),* Ohio goldenrod *(Solidago ohioensis),* slender-leaved goldenrod *(Solidago tenuifolia),* hyssop hedge nettle *(Stachys hyssopifolia),* floating bladderwort *(Utricularia inflata minor),* tall yellow-eyed grass *(Xyris difformis),* or yellow-eyed grass *(Xyris torta).*

(14) "Frequency" (in regard to inundation/soil saturation) means the periodicity of coverage of an area by surface water or soil saturation.

(15) "Habitat" means the environment occupied by individuals of a particular species, population, or community.

(16) "Inundated" means a condition in which water from a source temporarily or permanently covers a land surface.

(17) "Marl beaches" have the following characteristics:

(A) Morphology: shorelines of lakes in northeastern Indiana

(B) Hydrology: shallowly inundated in the spring, dry during the summer

(C) Water chemistry: alkaline

(D) Nutrient availability: indistinct

(E) Substrate: marl

(F) Indicator species: fen star sedge (*Carex sterilis*), twig rush *(Cladium mariscoides),* golden-seeded spike rush *(Eleocharis elliptica),* wicket spike rush *(Eleocharis rostellata),* short-headed rush *(Juncus brachycephalus),* wiry panic grass *(Panicum flexile),* hair beak-rush *(Rhynchospora capillacea),* slender bog arrow grass *(Triglochin palustris),* or flat-leaved bladderwort *(Utricularia intermedia).*

(18) "Prevalent vegetation" means the plant community or communities that occur in an area during a given period. The prevalent vegetation is characterized by the dominant macrophytic species that comprise the plant community.

(19) "Primary productivity" means the manufacture of organic, high-energy compounds from inorganic, low-energy constituents by plants and certain bacteria.

(20) "Rare or special concern species" means those species included in the January 22, 1997, database for endangered, threatened, rare and special concern species maintained by the Indiana Natural Heritage Data Center, Division of Nature Preserves, Division of Natural Resources*.

(21) "Saturated soil conditions" means a condition in which all easily drained voids (pores) between soil particles in the root zone are temporarily or permanently filled with water to the soil surface at pressures greater than atmospheric.

(22) "Sinkhole ponds have the following characteristics:

(A) Morphology: depressions formed by chemical and physical weathering of the underlying limestone. Found in the karst region of southern Indiana.

(B) Hydrology: Permenently inundated or saturated, dry only in drought years

(C) Water chemistry: Alkaline to circumneutral

(D) Nutrient availability: Indistinct

(E) Substrate: Indistinct

(F) Indicator species: *Glyceria acutiflora* or *Carex decomposita*. Absense of these species does not conclusively exclude an area from the sinkhole pond classification.

(24) "Sinkhole swamps" have the following characteristics:

(A) Morphology: depressions formed by chemical and physical weathering of the

underlying limestone. Found in the karst region of southern Indiana.

(B) Hydrology: Permenently inundated or saturated, dry only in drought years

(C) Water chemistry: Alkaline to circumneutral

(D) Nutrient availability: Indistinct

(E) Substrate: Indistinct

(F) Indicator species: *Rhynchospora corniculata, Carex decomposita, Carex gigantea, Itea virginica, Ranunculus pusillus,* or *Woodwardia areolata*

(25) "Threatened or endangered species" means the following species:

(A) Federal endangered and threatened species listed by U.S. Fish and Wildlife Service pursuant to 15 U.S.C. 1533.

(B) State threatened or endangered species listed by the Indiana Department of Natural Resources pursuant to IC 14-22-34.

(26) "Waters of the state" means:

(A) either:

(i) the accumulations of water, surface and underground, natural and artificial, public and private including, but not limited to, lakes, rivers, streams and wetlands; or

(ii) a part of the accumulations of water; that are wholly or partially within, flow through, or border upon Indiana.

(B) the term does not include:

(i) a private pond; or

(ii) an off-stream pond, reservoir, or facility, built for reduction or control of pollution or cooling of water before discharge;

unless the discharge from the pond, reservoir, or facility, causes or threatens to cause water pollution.

(27) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

* IBR. *(Water Pollution Control Board; 327 IAC 2-1.8-1)*

327 IAC 2-1.8-2 Antidegradation standards for wetlands

Authority:

Affected:

Sec. 2. (a) Designated uses for Tier I and Tier II wetlands shall be maintained and protected so that impacts do not result in a net loss of wetland acreage or uses except as provided by this section.

(b) Whenever an activity that requires a control document that will impact a wetland, other than a wetland that has been designated as an Outstanding State Resource Water (OSRW) or an Outstanding National Resource Water (ONRW), the wetland will be classified as a Tier I or a Tier II wetland based upon the wetland's sensitivity to disturbance, rarity, and its potential to be adequately replaced by compensatory mitigation. The following procedure shall be used to classify Tier I and Tier II wetlands:

(1) Tier I wetlands include all wetlands not included in the Tier II wetland category.

(2) Tier II, high quality wetlands, are any of the following specific types of wetlands:

(A) A wetland where the department of natural resources has documentation of a wetland-dependent listed species. If a qualified expert submits a demonstration to the department of environmental management management showing that the wetland does not contain suitable habitat to support the listed species, then the wetland is not a Tier II wetland.

(B) A wetland located within one half mile radius of a site where the presence of a wetland-dependent listed species has been documented by IDNR unless:

(i) the wetland does not contain suitable habitat to support the listed species; or

(ii) impacts to the wetland will not adversely affect the listed species.

(C) Cypress swamps.

(D) Bogs.

(E) Fens.

(F) Dune and swales.

(G) Muck flats.

(H) Sinkhole ponds.

(I) Sinkhole swamps.

(J) Sand flats.

(K) Marl beaches.

(Water Pollution Control Board; 327 IAC 2-1.8-2)

327 IAC 2-1.8-3 Wetland antidegradation implementation procedures

Authority:

Affected:

Sec. 3. (a) Wetland antidegradation review requirements shall be according to the following:

(1) For a Tier I wetlands designated uses shall be maintained and protected, and no degradation shall be allowed unless it is demonstrated that:

(A) there is no practicable alternative, based on technical, social, and economic criteria, that would have less adverse impact on the wetland ecosystem, so long as the alternative does not have other significant adverse environmental impacts;

(B) the impact would not result in significant degradation to the aquatic ecosystem, as determined in accordance with 40 CFR Part 230.10 (c);

(C) appropriate and practicable steps will be taken to minimize potential adverse impacts on the wetland ecosystem;

(D) storm water and water quality controls will be installed in accordance with subsection (d); and

(E) compensatory mitigation shall be performed to replace the impacted wetland and its uses with a wetland of the same type that supports uses equal to or higher than existing uses of the impacted wetland, unless it is determined to be unnecessary by the commissioner due to there being no significant degradation of water quality. The commissioner may require that the compensatory mitigation be completed and approved prior to the initiation of the activity causing the impact to the wetland.

(2) For a Tier II wetland, the following requirements shall apply:

(A) The designated uses of a Tier II wetland shall be maintained and protected and no degradation shall be allowed unless it is demonstrated that:

(i) there is no practicable alternative, based on technical, social, and economic criteria, that would have less adverse impact on the wetland ecosystem, so long as the alternative does not have other significant adverse environmental impacts. Practicable alternatives are presumed to be available for a Tier II wetland unless it is clearly demonstrated otherwise;
(ii) appropriate and practicable steps will be taken to minimize potential adverse impacts on the wetland ecosystem;
(iii) the impact will not result in significant degradation to the aquatic ecosystem, as determined in accordance with 40 CFR Part 230.10(c);
(iv) storm water and water quality controls will be installed in accordance with subsection (d);
(v) compensatory mitigation shall be performed to replace the existing Tier II wetland and its uses with a wetland of the same type that supports uses equal to or higher than existing uses of the impacted wetland; if compensatory mitigation is not practicable, impacts to Tier II wetlands shall not be permitted; and
(vi) if compensatory mitigation is allowed, it shall be completed and approved by the commissioner prior to the initiation of the activity causing the impact to the wetland.

(B) In addition to the provisions under clause (A), the applicant must demonstrate that the proposed degradation is necessary to accommodate important social and economic development in the area in which the water body is located.
(C) Upon receipt of an application containing an antidegradation demonstration, the commissioner shall provide notice, and schedule and hold a public meeting on the application in accordance with 327 IAC 5-2.1-3.

(b) For a Tier I and II wetland, the following shall be met:
(1) Appropriate storm water control measures shall be installed to ensure that the peak post-development rate of surface water runoff (based on a ten (10) year/ twenty-four (24) hour storm) from the impacted wetland does not exceed the peak pre-development rate of runoff (based on a ten (10) year/ twenty-four (24) hour storm) from the impacted wetland; and
(2) Water quality improvement measures shall be incorporated into the design of the storm water control measures to the maximum extent practicable and may include, but are not limited to, the following:
(A) Oil and grease skimmers.
(B) Vegetative buffer strips.

(c) In addition to the other provisions of this section, the commissioner shall consider the following in determining whether an impact to a wetland shall be permissible:
(1) The use or uses that a wetland provides.
(2) The anticipated impact of the proposed loss of wetland acreage that:
(A) permanently or seasonally contains a state or federal threatened or endangered species; or
(B) provides habitat for a state or federal threatened or endangered species.
(3) Water quality impacts, including the cumulative impacts in a watershed, that may be a consequence of approving a request to degrade a wetland.

(d) For a wetlands that has been designated as an outstanding state resource water (OSRW) or outstanding national resource water (ONRW), the commissioner shall ensure that no degradation of the OSRW or the ONRW occurs. To ensure this no degradation standard is met, wetland impacting activities that require a control document shall be prohibited with the exception that a short term, temporary impact of an OSRW or ONRW may be allowed if the following conditions are met:

(1) The impact will last less than twelve (12) months.

(2) The person intending to cause the impact, applies to the department for authorization for a short term, temporary impact.

(3) The person provides justification for the short term temporary impact to the satisfaction of the commissioner.

(Water Pollution Control Board; 327 IAC 2-1.8-3)

327 IAC 2-1.8-4 Wetland designated uses

Authority: IC 13-14-8; IC 13-14-9; IC 13-18-3

Affected: IC 13-18-4; IC 13-30-2-1

Sec. 4. All wetlands are designated to include the following uses:

(1) Habitat for aquatic organisms including, but not limited to, fish, crustaceans, mollusks, insects, annelids, planktonic organisms.

(2) Habitat for wetland flora.

(3) Habitat for resident and transient wildlife species including, but not limited to, water dependent mammals, birds, reptiles, and amphibians.

(4) Surface and ground water movement that may include, but is not limited to, the maintenance of low water stream flow, ground water discharge, ground water recharge, and peak flow suppression.

(5) Recreational, educational, scientific, and natural aesthetic uses.

(Water Pollution Control Board; 327 IAC 2-1.8-4)

327 IAC 2-1.8-5 Minimum water quality criteria for wetlands

Authority: IC 13-12-3-1; IC 13-14-8; IC 13-14-9; IC 13-18-3; IC 13-18-4

Affected: IC 13-18; IC 13-30-2-1

Sec. 5. (a) In addition to the other applicable criteria in this rule, the criteria in this section are applicable at all times and places within a wetland.

(b) Hydrological conditions necessary to support the biological and physiological characteristics present in each specific wetland shall be protected. In addition, the following wetland characteristics shall be maintained including, but not limited to, the following:

(1) Natural water temperature variations.

(2) The chemical, nutrient, and dissolved oxygen regime of the wetlands.

(3) The normal movement of aquatic fauna.

(4) The natural pH range of the wetland.

(5) Normal water flows, levels, or elevations.

(6) Normal extent and duration of saturation and inundation.

(c) Water quality necessary to support existing habitats and the populations of water

dependant flora and fauna shall be protected to prevent significant adverse impacts on the following:

(1) Food supplies for aquatic life and wildlife.

(2) Reproductive and nursery areas.

(3) Dispersal corridors.

(Water Pollution Control Board; 327 IAC 2-1.8-5)

327 IAC 2-1.8-6 Criteria to classify wetlands as outstanding state resource waters (OSRW) and outstanding national resource waters (ONRW)

Authority: IC

Affected:

Sec. 6. (a) A wetland may be recommended for designation as an outstanding state resource water (OSRW) if one (1) of the following is met:

(1) The wetland supports a special wetland community or a threatened or endangered species. This status of supporting a special wetland community or threatened or endangered species is determined if one (1) of the following is met:

(A) The wetland has been determined to be one (1) of the following state or globally rare, threatened, or endangered wetland community type:

(i) Cypress swamps.

(ii) Bogs.

(iii) Fens.

(iv) Dune swales.

(v) Muck flats.

(vi) Sinkhole ponds.

(vii) Sinkhole swamps.

(viii) Sand flats.

(ix) Seep springs.

(x) Marl beaches.

(B) The wetland has a state or federal threatened or endangered species found on a permanent or seasonal basis.

(2) Four (4) out of the following six (6) conditions occur in the wetland:

(A) At least eighty (80) percent of the wetland species considered characteristic of the community type are present.

(B) State rare or special concern species are found in the wetland on a permanent or seasonal basis.

(C) There is a lack of significant anthropogenic degradation or damage to the wetland.

(D) Invasive exotic species cover less than 10% of the wetland area.

(E) There is a lack of significant alteration of adjacent slopes and surrounding uplands from agricultural production, residential, commerical, or industrial activities.

(F) The wetland is located wholly or partially within or adjoining to the following types of managed lands:

(i) Public land managed for conservation or land dedicated as a state nature preserve.

(ii) Registered natural area.

(b) Any wetland that meets the conditions for being recommended for designation as an outstanding state resource water (OSRW) and is a resource that has national significance or value may be designated as an outstanding national resource water (ONRW). An ONRW includes wetlands that are recognized as important because of protection through official action such as:

(1) federal or state law;

(2) presidential or secretarial action;

(3) international treaty; or

(4) interstate compact.

(Water Pollution Control Board; 327 IAC 2-1.8-6)

327 IAC 2-1.8-7 Procedures to list a wetland as an outstanding state resource water (OSRW) or outstanding national resource water (ONRW)

Authority: IC

Affected:

Sec. 7. (a) A wetland may be recommended to the board for designation as an outstanding state resource water (OSRW) or outstanding national resource water (ONRW) through one (1) of the following procedures:

(1) The board receives a proposal for designation pursuant to IC § 13-14-8-5 on an application form consistent with the form described in subsection (b).

(2) The commissioner decides to commence a rulemaking before the board.

(3) An interested party submits a nomination to the commissioner pursuant to the procedures set forth in subsection (b) and within ninety (90) days from the closing date of the period for nomination, the commissioner determines if the nomination has merit.

(b) In March of each year, the commissioner shall publish a notice in the *Indiana Register* announcing that interested parties may submit nominations for water bodies to be considered for designation as OSRW or ONRW. A nominations shall be:

(1) received by the commissioner within sixty (60) days after publication of the notice;

(2) submitted on the application form published in the *Indiana Register*.

(3) completed with available information that supports the designation of the nominated water body, including information that shows that the water body meets the applicable prerequisites for designation that are specified in section 6.

(c) If the board receives a proposal for designation pursuant to subsection (a)(1) or if the commissioner decides to commence a rulemaking pursuant to subsection (a)(2) or subsection (a)(3), then the commissioner shall do the following:

(1) Prepare a detailed analysis of the potential designation that at a minimum shall include the following information:

(A) A specific delineation of the boundaries of the water body and of the watershed area that would be affected by the applicable implementation procedures.

(B) A detailed discussion of the reason or reasons that the waterbody is being proposed for special designation.

(C) A detailed description of the procedures that will be followed by the commissioner and by the board in considering whether the waterbody should be designated.

(D) A comparison of the existing antidegradation requirements of a waterbody to

all potential antidegradation requirements applicable to that waterbody if successfully designated as an OSRW or an ONRW.

(2) Publish an announcement of the consideration of rulemaking by giving notice in the newspaper with the largest daily circulation in the county or counties in which the watershed of the water body being considered for designation is located. The notice shall discuss the availability of the detailed analysis required under subdivision (1) and include the summary document required under subdivision (3).

(3) Prepare a summary document of the detailed analysis required under subdivision (1) that shall be mailed, using certified mail with return receipt requested, to the following parties within thirty (30) days of completion of the analysis:

(A) All interested parties that have requested notice of proposed designations.

(B) All local government units affected by the designation and implementation procedures.

(C) All NPDES permit holders affected by the designation and the implementation procedures.

(D) All property owners adjacent to the wetland under consideration for designation as an OSRW or ONRW.

(4) Take one (1) of the following actions, as applicable, within ninety (90) days after mailing the summary document required by subdivision (3):

(A) If proceeding pursuant to subsection (a)(1), submit the analysis and summary developed in subdivisions (1) and (3) along with a recommendation to the board.

(B) If proceeding pursuant to subsections (a)(2) or (a)(3) and based upon the analysis and summary developed in subdivisions (1) and (3), publish a notice regarding the specially designated waterbody in the Indiana Register pursuant to IC 13-14-9-7.

(Water Pollution Control Board; 327 IAC 2-1.8-7)